

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DANIEL & DONNA BROWN,

RESPONDENTS,

v.

CEDAR CREEK ROD & GUN CLUB,

APPELLANT.

DOCKET NUMBER WD69950
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: July 31, 2009

Appeal From:
BOONE COUNTY CIRCUIT COURT
THE HONORABLE JON EDWARD BEETEM, JUDGE

Appellate Judges:
DIVISION THREE: HAROLD L. LOWENSTEIN, Presiding Judge, JOSEPH M.
ELLIS and LISA WHITE HARDWICK, Judges

Attorneys:
Bruce D. Ryder, Esq., St. Louis and Louis J. Leonatti, Esq., Mexico, MO, for
appellant.

Steven J. Gunn, Esq., Tyler R. Breed, Esq., and Stephen M. Ryals, Esq., St.
Louis, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION
SUMMARY**

COURT OF APPEALS -- WESTERN DISTRICT

DANIEL & DONNA BROWN,

RESPONDENTS,

v.

CEDAR CREEK ROD & GUN CLUB,

APPELLANT.

WD69950

Boone County

Before Division Three Judges: HAROLD L. LOWENSTEIN, Presiding Judge,
Joseph M. Ellis and Lisa White Hardwick, Judges.

This appeal arises from a judgment that awarded Daniel and Donna Brown \$700,000 on their nuisance claim and granted injunctive relief against the Cedar Creek Rod & Gun Club. The Club seeks to vacate the injunction based on a statutory amendment granting firearm ranges immunity from civil liability for nuisance based on noise or sound emissions. The Club also contends the Brown's counsel made improper closing arguments that resulted in an excessive verdict and that remittitur should have granted.

REMANDED IN PART AND AFFIRMED IN PART.

Division Three holds:

1. The statutory amendment allows immunity for nuisance based on noise emissions but not for vibrations, which were also alleged as part of the nuisance petition. To the extent that any part of the

injunction was designed to abate the vibrations, it is valid and enforceable. The matter is remanded for the circuit court to consider the effect of the statutory amendment on the permanent injunction.

2. The Club failed to demonstrate any prejudice from comments made during closing argument. The circuit court properly considered the magnitude of the nuisance suffered by the Browns. The jury award of \$700,000 was supported by substantial evidence and was neither excessive nor manifestly unjust.

Opinion by: Lisa White Hardwick, Judge

July 31, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
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